

Application No. 09/414,951
Response dated October 7, 2004
Reply to Office Action dated April 7, 2004

REMARKS

Reconsideration and allowance of the above-identified application are respectfully requested. Claims 1-20 remain pending.

To begin, the undersigned and Mr. Parkinson would like to thank Examiner Kyle for his courtesy and consideration extended during the interview. As discussed during the interview and in more detailed below, another Rule 131 Declaration by the inventor is being submitted to antedate the Copple et al reference.

Summarizing the rejections set forth in the Office Action, claim 1 is again rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,178,408 to Copple et al. In addition, claims 2-8 and 10-13 are rejected under 35 U.S.C. §103(a) as being unpatentable over the Copple patent in view of U.S. Patent No. 5,915, 244 to Jack et al. Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over the Copple patent in view of U.S. Patent No. 6,285,989 to Shoham, previously of record. In addition, claims 14-16 and 18-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over the Copple patent in view of U.S. Patent No. 6,012,045 to Barzilai et al, previously of record

As discussed during the interview, Applicant respectfully submits that the Rule 131 Declaration accompanying this response provides sufficient evidence to show in conception and reduction to practice of the present invention as recited in at least rejected claims 1 and 6-20 prior to the effective date of the Copple patent which is July 14, 1999. Therefore, Applicant respectfully submits that the Copple patent no longer qualifies as "prior art" under U.S. statutes against those claims, and thus cannot be relied up by the Examiner in a rejection.

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Applicant respectfully submits that the Rule 131 Declaration accompanying this Response clearly meets the requirements set forth in 37 C.F.R. § 1.131 as described in MPEP § 715. Specifically, as described in MPEP § 715.07, the Declaration is required to allege facts, not conclusions, and these facts can be supported by exhibits accompanying the Declaration. It is noted that as stated in the MPEP, “an accompanying exhibit need not support all claim limitation, provided that a missing limitation is supported by the Declaration itself.” It is further noted that according to MPEP § 715.07(III), the dates of the exhibits can be removed, and the Applicant “may merely allege that the acts referred to occurred prior to a specific date.” It is noted that for the Examiner’s convenience and understanding, the dates of the exhibits have not been removed, and granted, some of the dates appearing on the screen shots are later than July 14, 1999. However, Applicant respectfully submits that the Rule 131 Declaration attests that the functionality shown in the exhibits was present in certain claimed embodiments of the invention prior to July 14, 1999, and this operability would therefore have existed prior to July 14, 1999 as indicated in several of the exhibits. In other words, the dates on the exhibits, in particular, the screen shots, are not necessarily intended to show the first date in which that functionality existed, but rather, that the functionality existed as of that date, and, as attested to by the Applicant in the Declaration, existed prior to July 14, 1999. For the Examiner’s convenience, a copy of the relevant portions of the MPEP § 715 with the sections referenced above highlighted are provided with this Response.

Because the Copple patent no longer qualifies as “prior art” in view of the establishment by the Rule 131 Declaration of conception and reduction to practice of the claimed invention as recited in at least claims 1 and 6-20 prior to the July 14, 1999 U.S. filing date of the Copple

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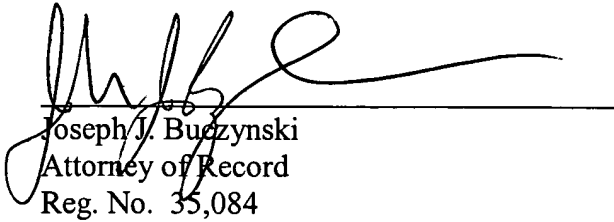
patent, all of the rejections against these claims that rely on the Copple patent should be withdrawn.

In addition, notwithstanding the status of the Copple patent as “prior art,” Applicant respectfully submits that all claims should be allowable. Specifically, with regard to dependent claim 2, Applicant respectfully submits that as admitted by the Examiner, the Copple patent fails to teach or suggest the ability for a participant to purchase additional points upon determining that they have an insufficient amount of points to place a bid. The Examiner relies on the teaching of the Jack patent, in particular column 3, line 46 through column 4, line 55, for this feature. Applicant respectfully submits that as stated in column 4, lines 53–55 of the Jack patent, the employees that can participate in the auction are not made aware of the cost of the award points, and there is no teaching or suggestion that additional award points can be purchased if an employee determines that he or she has an insufficient amount of points when attempting to make a bid. Hence, the features of claim 2, and claims 3-5 which depend from claim 2, are not met by the Copple and Jack patents.

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For these reasons, Applicant respectfully submits that all claims should be allowable.
Should the Examiner have any questions or wish to discuss this matter further, he is invited to
contact the undersigned at the number indicated below.

Respectfully submitted,



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